

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0487, In the Matter of Raymond Valle and Angela Valle, the court on August 12, 2005, issued the following order:

The petitioner, Raymond Valle, appeals his decree of divorce. He contends that the trial court erred in finding disability insurance benefits purchased with marital income to be marital assets and in dividing them equally between the parties. We affirm.

The trial court has broad discretion in determining matters of property distribution in a final divorce decree; absent an unsustainable exercise of discretion, we will not overturn its rulings or set aside its factual findings. In the Matter of Letendre & Letendre, 149 N.H. 31, 34 (2002). In this case, the sole issue before us is whether the trial court erred in awarding the respondent, Angela Valle, a half interest in a disability insurance policy that was purchased with the after tax income of the parties during their marriage.

The petitioner argues that the disability insurance benefits are contingent benefits and intended as replacement income; therefore, he contends, they are more properly subject to court orders relating to support rather than to distribution as marital property.

RSA 458:16-a (2004) provides that the court shall make an equitable division of property between parties in a divorce decree. Property includes both tangible and intangible assets. RSA 458:16-a, I. Intangible property includes but is not limited to employment benefits and vested or non-vested pension or other retirement benefits. *Id.* It was the legislature's intent that any property acquired up to the date of a decree of legal separation or divorce would be subject to equitable distribution. In the Matter of Preston and Preston, 147 N.H. 48, 51 (2001) (holding that annuity issued in settlement of personal injury claim was marital property subject to equitable distribution). Because the insurance policy subject to this appeal was acquired during the marriage, it was subject to equitable distribution.

The petitioner also argues that an equal distribution of the policy benefits was not equitable because of his ongoing medical expenses and support of his daughter. Having reviewed the record of the petitioner's other income, including the \$5700 a month provided by other disability payments, exclusive of the

contested policy, as well as the other assets available to the parties' college-age daughter, we find no error in the trial court's ruling. Accordingly, we affirm.

Affirmed.

NADEAU, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**